

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

MARILYN J. HENRY,

Respondent

v.

MISSOURI DEPARTMENT OF MENTAL HEALTH.

Appellant

DOCKET NUMBER WD72667

DATE: August 9, 2011

Appeal From:

Circuit Court of Cole County, MO
The Honorable Paul Campbell Wilson, Judge

Appellate Judges:

Division Three
James Edward Welsh, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Attorneys:

Daryl R. Taylor, Kansas City, MO

Counsel for Appellant,

Attorneys:

Daniel E. Hunt, Jefferson City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**MARILYN J. HENRY, Respondent, v. MISSOURI
DEPARTMENT OF MENTAL HEALTH, Appellant**

WD72667

Cole County

Before Division Three Judges: Welsh, P.J., Smart, and Ellis, JJ.

This is an appeal from the judgment of the circuit court reversing the Personnel Advisory Board's (PAB) decision, which affirmed the Missouri Department of Mental Health's (Department) decision to dismiss Marilyn J. Henry from her merit system position with the Department. Under Rule 84.05(e), Henry filed the appellant's brief because she was aggrieved by the PAB's decision. In her sole point on appeal, Henry contends that the PAB's decision that she should be terminated from employment was not based upon substantial and competent evidence, was unreasonable, arbitrary, and capricious, and was an abuse of discretion. In particular, Henry asserts that the evidence was insufficient to establish that she abused a client at the hospital or that she violated any Department guidelines or rules.

AFFIRMED

Division Three holds:

The PAB's rationale for its decision upholding Henry's termination was not supported by substantial and competent evidence and was, therefore, unreasonable. The evidence was insufficient to establish that Henry willfully violated the lawful regulations or policies of Fulton State Hospital or that she physically abused a client at the hospital.

Opinion by James Edward Welsh, Presiding Judge

August 9, 2011

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